

March 25, 2016, and April 14, 2017, respectively. The OEIG training materials for each year contained a module on the Ethics Act's gift ban prohibitions. During the course of OEIG's investigation of the matters set out in this Complaint, Respondent acknowledged participating in these and other Ethics Act annual training sessions, including their gift ban components.

3. Sodexo America LLC provides food services to IMSA, including daily meals and catering for IMSA and its students. In 2010, Sodexo entered into a one-year contract with IMSA to provide food and catering services from August 1, 2010, through July 31, 2011, which included an option to renew for up to nine additional one-year periods (the "Contract"). To date, IMSA and Sodexo have renewed the Contract eight times. The current service period extension expires on July 31, 2019.

4. Respondent has been the interim Principal of IMSA since June 8, 2017. Prior to that, he was IMSA's Executive Director of Student Affairs for nineteen years. Since 2012, Respondent's signature has appeared on each of the renewals as IMSA's Contract Manager.

5. Glenn Yehling is a Sodexo Executive Chef who has been assigned to work at IMSA since October 24, 2016. He reports to Sodexo General Manager Kathy McDonnell, who has served in that capacity since June 2016. Currently, Sodexo staffs the IMSA account with approximately 21 workers who provide IMSA with catering and day-to-day food service support.

6. Yehling's Sodexo expense reports indicate that on December 10, 2016, he bought a bottle of spirits from a local liquor store for \$197.99, for the business purpose of a making a "gift." A second Sodexo expense report indicates that Yehling purchased a "Gift Cert" on December 17, 2016, for the business purposes of "gift for client." The vendor for the "gift for client" was Topgolf Gift Cards and the amount paid was \$100.00.

7. Yehling and McDonnell met with Respondent in his IMSA office in mid-December 2016 and gave him the bottle of spirits and the gift card. Sodexo reimbursed Yehling for both purchases.

8. An examination of Sodexo's records indicate that it approved and paid \$2000 for two people to attend the Wabaunsee Community College Foundation Golf Outing at Rich Harvest Farms, in Sugar Grove, Illinois, on June 19, 2017. The twosome who attended the golf event and whose fees were paid by Sodexo were Sodexo District Manager Ted Gannon (McDonnell's supervisor) and Respondent.

9. OEIG interviewed Respondent on January 16, 2018. During the course of that interview, investigators asked Respondent if any Sodexo employee had ever given him any gifts such as meals, golf outings, tickets, gift cards, or cash. Respondent answered that:

a. in June or July 2017, Gannon had offered to treat him to a fundraiser golf outing at Rich Harvest Farms; the price for a round of golf at this fundraiser was \$1,000. After speaking with his Ethics Officer about the outing, Respondent attended the golf outing as Gannon's guest on June 19, 2017, and donated \$1,000 to Willow Creek Community Church;

b. when asked if any Sodexo employee gave him a bottle of Scotch in or around December 2016, he said that he did not receive a bottle of Scotch or any other liquor from any Sodexo employee;

c. when asked if anyone had given him a Topgolf gift certificate in his office in December 2016, he said no; and

d. when asked if he had ever exchanged presents or gifts with Gannon, Hernandez said that in October 2016 he received an email from Gannon with an attached \$100 Topgolf gift certificate, and that Gannon had sent the email to Hernandez's personal email account. Hernandez said the gift certificate from Gannon was for Hernandez's birthday.

10. At Respondent's request, OEIG investigators conducted a follow-up interview with him on January 22, 2018. During this follow-up interview, Respondent stated that shortly after completing his first OEIG interview, he had consulted his calendar and spoken with his wife, which refreshed his recollection regarding some of the matters he had discussed in his January 16 interview. More particularly, Respondent explained that:

a. Gannon had sent him a \$100 Topflight gift card on or about December 16, 2016, with the salutation "happy holidays," which Gannon had sent to Respondent's personal email account, and

b. Respondent now recalled having received a bottle of liquor in December 2016 from McDonnell and Yehling as a holiday gift, and that he gave the bottle away within a week to a retired IMSA employee who had stopped by the school.

11. Based on Respondent's representation during his January 22 interview that he had made increased charitable donations equivalent to the \$1,000 value of the golf outing during the second half of 2017, and that he had not reduced his 2017 donations to compensate for the Rich Harvest Farms golf outing with Gannon, OEIG requested Respondent's donation records for 2015, 2016, and 2017. Those records showed that Respondent donated a total of \$500 in 2015, a total of \$2,100 in 2016, and a total of \$2,050 in 2017. These records further show that in 2017, Respondent made \$800 in charitable donations prior to attending the golf outing on June 19, 2017, and made \$1,250 in installment payments during the remainder of 2017.

CONCLUSIONS OF LAW

1. Petitioner Susan M. Haling is the Acting Executive Inspector General for the Agencies of the Illinois Governor, duly appointed by the Governor for the State of Illinois pursuant to 5 ILCS 430/20-10. Petitioner has broad authority "to investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, or violations of [the Ethics Act] or violations of other related laws and rules." *Id.* § 20-10(c).

2. At all times relevant to the allegations in the Complaint, Respondent was a State employee, and therefore subject to the provisions of the Ethics Act and to the jurisdiction of the Executive Ethics Commission (the "Commission") with respect to matters arising under the Ethics Act. *Id.* § 20-5(d).

3. As a State employee, Respondent's "ultimate jurisdictional authority" was the Governor and, therefore, Respondent was subject to the jurisdiction of the Executive Inspector General for the Governor. *Id.* §§ 1-5, 20-10(a), (c).

4. Pursuant to 5 ILCS 430/20-5(d), the Commission has jurisdiction over "all officers and employees of State agencies" for purposes of any matter arising under or involving the Ethics Act. Consequently, the Commission's authority extends to officers and employees of IMSA.

5. As a State employee, Respondent was subject to the provisions of the Ethics Act and, therefore, subject to the jurisdiction of the Commission with respect to matters arising under the Ethics Act. *Id.*

6. In relevant part, the Ethics Act provides:

Gift ban. Except as otherwise provided in this Article, no officer, member, or State employee shall intentionally solicit or accept any gift from any prohibited source or in violation of any federal or State statute, rule, or regulation. This ban applies to and

includes the spouse of and immediate family living with the officer, member, or State employee. No prohibited source shall intentionally offer or make a gift that violates this Section.

5 ILCS 430/10-10.

7. The Ethics Act further provides:

Gift ban; disposition of gifts. A member, officer, or employee does not violate this Act if the member, officer, or employee promptly takes reasonable action to return the prohibited gift to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, renumbered, or succeeded.

5 ILCS 430/10-30.

8. At all times relevant to the allegations in Petitioner's Complaint, Respondent had a duty to comply with the provisions of the Ethics Act, and with all policies adopted and implemented pursuant thereto.

9. Respondent violated Section 10-10 of the Ethics Act when in December 2016, he received a \$100 gift certificate and \$197.99 bottle of spirits from representative of Sodexo America, LLC, a prohibited source. Respondent did not dispose of these gifts in a manner allowed under Section 10-30.

10. Section 50-5(e) of the Ethics Act provides, "An ethics commission may levy an administrative fine of up to \$5,000 against any person who violates this Act...".
5 ILCS 430/50-5(e).

STANDARD OF REVIEW

Granting summary disposition in an administrative proceeding is comparable to granting summary judgment under Section 2-1005 of the Code of Civil Procedure. *Bloom Tp. High School v. Ill. Commerce Comm'n*, 309 Ill. App. 3d 163, 177, 242 Ill. Dec. 892, 903, 722 N.E.2d 676, 687 (1st Dist. 1999); *Cano v. Vill. of Dolton*, 250 Ill. App. 3d 130, 138, 189 Ill. Dec. 883, 889, 620 N.E.2d 1200, 1206 (1st Dist. 1993). Because of the similarities in the two procedures, it is appropriate to apply the standards applicable to granting summary judgment under section 2-1005 when reviewing a summary determination entered by an administrative agency. See *Cano*, 250 Ill. App. 3d at 138, 189 Ill. Dec at 889, 620 N.E.2d at 1206.

Summary judgment is appropriate only where “the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005(c).

In determining whether a genuine issue as to any material fact exists, the Commission must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts. The use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a matter. However, it is a drastic means of disposing of litigation and, therefore, should be allowed only when the right of the moving party is clear and free from doubt. *Adams v. N. Ill. Gas Co.*, 211 Ill.2d 32, 43, 284 Ill. Dec. 302, 310, 809 N.E.2d 1248, 1256 (2004).

ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes that he intentionally violated Section 10-10 of the State Officials and Employees Ethics Act (5 ILCS 430/10-10) when he accepted a \$100 gift card and a \$197.99 bottle of spirits from a prohibited source.

Consequently, the Commission may levy an administrative fine of up to \$5,000 against Respondent for each of his violations of the Ethics Act. 5 ILCS 430/50-5(a). Respondent submitted a statement of mitigating factors.

On the issue of the gift of the June 19, 2017 golf outing, the Commission notes that Respondent consulted his ethics officer in advance of the event. It appears that Respondent’s charitable contributions increased significantly just prior to and subsequent to this event, and that Respondent intended those contributions to be a proper disposal of the prohibited gift in accordance with Section 10-30 of the Ethics Act. Given these facts, the Commission does not have sufficient facts to conclude that this golf outing constituted a violation of the Gift Ban.

The Commission notes that Sodexo America, LLC is a large company that does business with a number of public institutions, which makes them a prohibited source with respect to those institutions and their employees. Prohibited sources are forbidden from intentionally offering or making gifts that violate the Gift Ban. Gifts of this nature unnecessarily complicate the lives of public servants who receive them. They can also

raise the appearance of “pay to play,” though there is absolutely no evidence of that in the present matter.

The Ethics Act does not provide any guidance for the Commission to consider when levying a fine. The Commission has, however, adopted rules, found at 2 ILL. ADMIN. CODE 1620.530(b), that outline fourteen aggravating and mitigating factors the Commission may consider in assessing an appropriate fine. In relevant part, these factors include: the nature of the violations; the extent of the use of resources, money, and time of the State; the extent of the Respondent’s intent or knowledge of the facts surrounding the violation; and Respondent’s cooperation in the matter. 2 ILL. ADMIN. CODE 1620.530(b)(1), (4), (5) and (11).

WHEREFORE, for the foregoing reasons, Petitioner’s unopposed motion for summary judgment is granted. The Commission levies an administrative fine of \$1000.00 against Respondent Robert Hernandez for violation of 5 ILCS 430/10-10.

This is a final administrative decision subject to the Administrative Review Law.

SO ORDERED.

DATE: November 14, 2018